HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.477 of 2007

Between:

V. Bhaskar Rao …Appellant

And

The Commissioner of Co-operation and
Registrar of Co-operative Societies,
Government of Andhra Pradesh, Hyderabad
and others. …Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri M.V. Rajaram

14th June, 2007

Per G.S. Singhvi, C.J.

Having successfully used the powers of this Court to pass interim orders and thereby frustrated the action initiated by Joint Director of Agriculture, Kakinada (respondent No.8) and District Collector (Co-operation), East Godavri, Kakinada (respondent No.2) for fixing his liability in matter involving misappropriation of the funds of District Co-operative Marketing Society Ltd., East Godvari, Kakinada (for short, 'the society'), but ultimately failing to convince the learned Single Judge to quash the sanction accorded by respondent No.2 vide order dated 21-8-1996 and show cause notice issued by respondent No.8 vide Memo dated 6-9-1996, the appellant has preferred this appeal under Clause 15 of the Letters Patent with the hope that the Division Bench may, keeping in view the factum of his retirement from service,

sympathetically consider the prayer for restraining the respondents from taking further action in the matter.

A perusal of the record shows that while the petitioner was posted as Assistant Agriculture Officer, Sakinetipalli, East Godavari District, the Commissioner and Director of Agriculture, Andhra Pradesh (for short, 'the Commissioner') conveyed the Government of India's approval for supply of pesticides to the farmers at subsidised rates under the Centrally Sponsored Scheme. As per that scheme, the society supplied P.P. chemicals to Assistant Agriculture Officers for distribution among needy farmers. On receipt of complaint that there was large scale misappropriation of funds collected from the farmers to whom P.P. chemicals were supplied, respondent No.2 and Commissioner for Co-operation and Registrar of Co-operative Societies issued proceedings Rc.No.5129/93-M, dated 30-8-1995 and Rc.No.48306/95-V, dated 13-10-1995 for holding inquiry into the affairs of the society under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act'). After receipt of the report of inquiry, respondent No.2 issued notice dated 19-12-1995 to the appellant requiring him to remit an amount of Rs.2,14,512/- and also show cause as to why action may not be initiated against him under Section 409 IPC. In his reply dated 18-1-1996, the appellant denied the allegation levelled against him and prayed that he may be provided with complete account of the society along with proof of having received the stocks. He also requested that proceedings may not be initiated against him on the charge of criminal breach of trust. Thereafter, respondent No.2 issued order dated 21-8-1996 whereby he sanctioned prosecution of the appellant and 21 other functionaries of the society and officers of the Agriculture Department. Respondent No.8 also issued Memo dated 6-9-1996 requiring the appellant to finalise the dues with an indication that his failure to do so will result in placing of the matter before the Commissioner for initiation of disciplinary action under the CCA Rules.

The appellant challenged the sanction accorded by respondent No.2 for his prosecution and Memo dated 6-9-1996 issued by respondent No.8 by contending that respondent No.2 does not have the jurisdiction to sanction his prosecution and respondent No.8 could not have issued memo without holding enquiry in terms of Section 60 of the Act.

By an order dated 23-9-1996, a learned Single Judge stayed the recovery of Rs.62,370/- from the petitioner with an observation that the prosecution or disciplinary proceedings proposed to be conducted against the petitioner shall be without prejudice to his contention in the writ petition and subject to the remedy which he may avail when such prosecution or disciplinary proceedings are initiated. On 1-7-1999, another learned Single Judge ordered listing of the case for final hearing on 12-8-1999, but the matter could not be taken up for next two years. On 3-7-2001, the writ petition was dismissed in default because no one appeared for the appellant. Subsequently, that order was recalled and the writ petition was restored to its original number. After another one year and two months, the writ petition was dismissed by the learned Single Judge on the ground that the remedy available to the petitioner was to approach the Andhra Pradesh Administrative Tribunal. However, the Tribunal declined to entertain the original application filed by the appellant.

The case was finally listed before the learned Single Judge in January, 2007, who dismissed the same by recording the following reasons:

> "While Sri M.V. Raja Ram, learned counsel for the petitioners, would seek to canvass on merits and contend that the petitioners are in no way concerned with the liability and that no action can be taken under the provisions of the Co-operative Societies Act, the impugned order dated 6-9-1996, merely provides that, in case, the petitioners do not make payments, disciplinary action be initiated. Needless to state that, in case, disciplinary action is initiated against them, it is always open for them to take all such defences, as are

available to them in law, in such a departmental enquiry. This Court, in judicial review proceedings, would not, ordinarily, examine various contentions urged on merits to issue directions against initiation of disciplinary proceedings except where such initiation is without jurisdiction.

Insofar as the proceedings of the Collector and District Magistrate, East Godavari District, dated 21-8-1996 is concerned, it is an order sanctioning prosecution against various persons including the petitioners herein. While Sri M.V. Raja Ram, learned counsel for the petitioners, would contend that the District Collector does not have any power to sanction prosecution, the impugned order states that the District Collector had sanctioned prosecution in exercise of the powers delegated to him under G.O.Ms.No.2351, Food and Agriculture (Cooperative-IV) Department, dated 18-11-1967. Whether or not the District Collector has the power to sanction prosecution is a matter which does not necessitate examination at this stage for the bar under Section 197 Cr.P.C., on which reliance is placed by Sri M.V. Raja Ram, is to the Court taking cognizance of the offence without prior sanction. It is always open to the petitioners herein to raise all these please with regards District Collector not having the power to sanction prosecution at that stage."

Sri M.V. Rajaram tried to convince us that the reasons assigned by the learned Single Judge for refusing to quash the proceedings initiated by respondent No.8 and sanction accorded by respondent No.2 are legally unsustainable and that the action initiated against the appellant should be nullified on the ground of violation of the mandate of Section 60 of the Act, but we have not felt impressed. Rather, we are convinced that the learned Single Judge did not commit any error by declining to entertain the appellant's prayer for quashing Memo dated 6-9-1996 vide which respondent No.8 had merely called upon him to deposit the amount with the rider that his failure to do so may result in placing of the matter before the Commissioner for initiation of disciplinary action. In our considered view, Memo dated 6-9-1996 cannot, by any stretch of imagination, be treated as an order adversely affecting the rights of the appellant. The same can, at best, be treated

as a prelude to the initiation of departmental enquiry. As and when departmental enquiry is actually initiated, the appellant can raise all legally permissible objections and request the disciplinary authority not to proceed with the matter. If the concerned authority holds enquiry without considering the objections raised by the appellant and final order is adverse to him, then he can challenge the same by availing appropriate legal remedy. However, at the show cause notice stage, there is no justification for judicial intervention. In this connection, we may usefully refer to the judgments of the Supreme Court in **State of U.P. v. Brahm Datt Sharma**[1], **Executive Engineer, B.S.H.B. v. Ramesh Kumar Singh**[2], **Union of India v. Metal Box Co. of India Ltd.**[3], **A.K. Singh v. Uttarakhand Jan Morcha**[4], **Ulagappa v. Divisional Commr., Mysore**[5] and **GKN Driveshafts (India) Ltd. V. Income Tax Officer**[6].

We are also in complete agreement with the learned Single Judge that the sanction accorded by the District Collector cannot be made subject matter of challenge in a petition filed under Article 226 of the Constitution of India and it is open to the appellant to raise all legally permissible objections before the court which may take cognizance of the offence.

With the above observations, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP. No.912 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

14th June, 2007

C.V. NAGARJUNA REDDY, J

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[1] (1987) 2 SCC 179

[2] (1996) 1 SCC 327

[3] (1996) 11 SCC 122

[4] (1999) 4 SCC 476

[5] (2001) 10 SCC 639

[6] (2003) 1 SCC 72